APPENDIX A

In the United States Court of Appeals For the Seventh Circuit

Nos. 15694, 15695

SEPTEMBER TERM, 1966 APRIL SESSION, 1967

IN THE MATTER OF THE WOODMAR REALTY COMPANY, a Corporation, *Debtor,*

* * * * *

CITY OF HAMMOND, INDIANA, a Municipal Corporation,

and

WOODMAR REALTY COMPANY, a Corporation, Debtor,

Appellants,

vs.

WALTER A. McLEAN, Trustee, et al.,

Appellees.

Appeal from the United States District Court for the Northern District of Indiana, Hammond Division.

JUNE 22, 1967

Before KNOCH, CASTLE and KILEY, *Circuit Judges.*

KILEY, *Circuit Judge.* These consolidated appeals by Woodmar Realty Company, No. 15694, and the City of Hammond, Indiana, No. 15695, challenge the district court's judgment overruling their objections to the Trustee's Supplemental Final Report and to the fee and ex-

pense allowances for the Trustee and his attorney in the Woodmar bankruptcy proceeding. We affirm.[1]

WOODMAR

Woodmar contends that the Trustee's motion for summary judgment resulting in the orders entered July 24, October 10 and December 31, 1963, and May 15, 1964, allowing claims against the bankrupt estate was unauthorized under FED. R. CIV. P. 56 and the precedents and should have been stricken.

Since we wish to aid in the termination of this long pending proceeding, we are not disposed to treat this contention as waived by Woodmar's failure to appeal from these final orders.[2]

The parties agreed in 1957 that a typical lien claim, No. 441, and Woodmar's objections be tried as a "test case" to establish the law for determination of the 313 claims pending. The case was tried, with the Trustee excluded from participation, and in July, 1961, the district court entered judgment overruling as meritless Woodmar's objections and allowing the claim. Subsequently Woodmar appealed, and this court affirmed on August

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(1) A motion was made in this court to dismiss Woodmar's appeal for lack of standing because (a) in 1964 this court decided it had lost its previous standing, In re Woodmar Realty Co., 306 F.2d 479 (7th Cir. 1962), cert. denied, 380 U.S. 952 (1965), and (b) Woodmar's 1965 purchase of three claims without court approval did not give it standing but rather gave it a claim against itself or extinguished the claim. We prefer not to dismiss the appeal because there is language in the opinion in the above case which may have misled the bankrupt into the anomalous position of asserting standing because of claims bought with money borrowed from one of its directors. Id. at 480.

(2) This bankruptcy proceeding is twenty-six years old. It commenced as a Chapter X reorganization proceedings in 1941 and became by order a straight bankruptcy proceeding in 1953. Since 1953 there has been a more or less continuous course of litigation, including eight appeals from the judgments of four district court judges, Judges Steckler, Swygert (now Circuit Judge), Parkinson (later Circuit Judge and now deceased), and Tehan.

In a final district court order of February 24, 1960, Woodmar's previously acquired authority to settle claims against the estate was revoked. On October 10, 1963, the district court decided Woodmar no longer had standing as a party "in these proceedings." No appeal was taken by Woodmar. On September 23, 1964, this court dismissed by order an appeal by Woodmar and held that "appellant is no longer a party in interest and lacks standing to appeal." In re Woodmar Realty Co., No. 14756, 7th Cir. April 28, 1964. This dismissal presumably motivated purchase of the claims by Woodmar in 1965 so as to regain standing to object to the Trustee's petition for approval of the Supplemental Final Report. For purposes of this opinion, we assume but do not decide that Woodmar has standing.

20, 1962. *In re Woodmar Realty Co.*, 307 F.2d 591 (7th Cir. 1962).

On November 29, 1962, the district court ordered Woodmar to file statements to disclose wherein the decision on claim 441 was not, as stated in the Trustee's motion, controlling as to all lien claims. The statement was filed by Woodmar with respect to 132 of the more than 300 claims. The court reviewed the statement in exhaustive opinions, and found that the decision on claim 441 was determinative of all the claims. Thereafter it entered the several orders allowing the claims.

We think that it would be unconscionable at this late stage of the proceedings to set aside the district court's orders, upon the ground that the Trustee's motion was unauthorized—a ground that could and should have been, but was not, presented here for decision in timely appeals.

Even if literally the Trustee falls outside Rule 56,[3] which we do not decide,[4] we hold that in view of the long history of this litigation, the stipulated test case for all claims and the failure of Woodmar to respond to the court's order to present facts requiring hearing, a proper administration of justice requires that the judgment before us be affirmed. We think the judgment appealed from is right and we are not disposed to say under the particular facts here that it must fall because the Trustee was permitted at an earlier stage to make a motion for summary judgment.

We do not view the Trustee on this record as having taken a position inimical to the bankrupt estate or violative of his trust. We think his obligation was to do what he did, under the circumstances, *i.e.*, seek in summary

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(3) Rule 56. Summary Judgment.

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(4) But see In re Yellow Transit Freight Lines, Inc., 207 F.2d 602, 604 (7th Cir. 1953); Beall v. Pinckney, 132 F.2d 924 (5th Cir. 1943).

fashion to terminate the proceeding in a just and prudent way with the court's approval. *Cf. In re Woodmar*, 294 F.2d 785, 793 (7th Cir. 1961), *cert. denied*, 369 U.S. 803 (1962). We presume that a bankrupt, in whose shoes the Trustee stands, *In re Woodmar*, 294 F.2d at 793, would under all the circumstances here deem it his obligation to see that lien creditors with valid claims lawfully received as soon as practicable what was due them from assets fairly available.

We consider to be wholly meritless Woodmar's argument that the district court's order of November 29, 1962, requiring filing of statements by Woodmar as to the Trustee's motion for summary judgment, was an abuse of discretion under FED. R. CIV. P. 16. In view of the previous trial testing claim 441, we think the order was clearly justified under Rule 16 in the circumstances of this case.[5]

We turn now to the judgment before us entered by the district court on February 10, 1966, pursuant to a hearing upon the Trustee's Supplemental Final Report and petitions for fees by the Trustee and his attorney. The judgment "denied" objections of Woodmar and the City of Hammond (holder of claims Nos. 261, 507, 450 and 235), to the Report and petitions, and so far as pertinent on this appeal, ordered payment of all claims with limitations as to some; allowed the Trustee fees of $5,205.75 and expenses of $729.96; allowed Trustee's attorney fees of $120,000 and expenses and reimbursals of $3,300.96; and approved the Supplemental Final Report.

We think the law settled in the trial of claim 441 answers Woodmar's argument that the first two appeals to this court[6] precluded the district court from ordering payment of the claims without giving Woodmar the opportunity to be heard as an adversary. Woodmar, after that trial, had no "right" to contest each claim it objected

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(5) Rule 16. Pre-Trial Procedure; Formulating Issues
In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider
(1) The simplification of the issues;
* * *
(6) Such other matters as may aid in the disposition of the action.

(6) In re Woodmar Realty Co., 241 F.2d 768 (7th Cir. 1957), and 284 F.2d 815 (7th Cir. 1960).

to, unless it produced facts or issues not then known or presented or decided in that trial. And the district court decided in final unappealed orders on the basis of the claim 441 decision that no new facts or issues were presented in opposition to the Trustee's motion for allowance of the claims. The failure of Woodmar to respond sufficiently to the court's November 29, 1962, order by raising genuine material issues of fact precludes it from now claiming violation of due process rights in denial of a hearing on each claim objected to.

No question can now be raised by Woodmar with respect to the validity of the qualified payments ordered in the judgment to "32 lien claims involving dead persons," etc. These claims were allowed by the district court under the Trustee's motion for summary judgment. Woodmar did not appeal from the order of allowance. There was no need to require proof again of those claims. Similarly, there was no reason to retry the 102 claims which Woodmar had compromised in 1957 and 1958. The compromises were set aside by the district court on April 28, 1964, upon petitions of certain lien creditors seeking relief from the compromises. The court then ordered allowance of the claims in the amounts found due by the Trustee. This court dismissed Woodmar's appeal from an order denying a motion to strike those claims on the ground that the order was non-appealable. 307 F.2d 595 (7th Cir. 1962).

Finally, Woodmar challenges the fees and expense allowances as an abuse of discretion. It contends no evidence was received or permitted at the hearing, that the district court's opinion underlying the allowances was based on bias and prejudice against Woodmar and its counsel, that the court did not find any benefit to the estate from the services rendered, and that the allowances violated federal standards. There is no merit in any of these contentions.

For more than twelve years' service (or 1,530½ hours) in this proceeding, the court allowed the Trustee the fee of $5,207.75, the maximum permitted under 11 U.S.C. § 76(a) and the predecessor of 11 U.S.C. § 76(c)(1) (1964).[7] Averaged out, the allowance is about $3.50 per

[7] The services commenced before 1956.

hour for work done and to be done in winding up the estate. We find no basis for Woodmar's claim of bias and prejudice.

There was no need for taking evidence at the hearing. Woodmar filed eleven pages of objections to the Trustee's report. The court found that except for three paragraphs the objections "are almost an exact copy" of parts of objections made to the Trustee's Report in April, 1958, and subsequently decided against Woodmar, and that these three paragraphs ignored the decision in 1958 upon test claim 441 which effectually overruled the objections in the paragraphs. We find meritless the contention that the Trustee's services did not benefit the estate. The record and district court's opinion fully refute the contention.

The court found that the allowance of $120,000 to the Trustee's attorney "constitutes reasonable compensation for work done and to be done" in winding up the estate. Woodmar offers no persuasive reason why Trustee's counsel, who has served since early 1953 and spent a total of 567½ days (or 1605¾ hours) involving much litigation in the district court, this court and the Supreme Court, should not have received the allowance the court granted. We see no reason for disagreement with the findings of the court and we find no abuse of discretion in the allowances made to the Trustee and his attorney.

CITY OF HAMMOND

What we have said in discussing the contentions of Woodmar settles the contention of Hammond, owner of three claims allowed in the amount of $5,968.28, that the Trustee was obliged to object to all of the lien claims. The test case of claim 441 in 1958 and the 1963 summary judgment proceedings rejected the same contentions that Hammond now advances that the liens upon which the claims are based had lapsed under Indiana law and that certain "bar dates" set in the original Chapter X proceedings in 1941 barred approximately 90 of the claims allowed. These contentions have no merit. *In re Woodmar Realty Co.*, 307 F.2d 592, 594 (7th Cir. 1962).

Hammond complains that no specific findings of fact underlying lien allowances were made under Rule 52(a). Specific findings were unnecessary, since the orders pursuant to the motion for summary judgment allowing the claims found that no genuine material issues of fact were presented. *A R Inc.* v. *Electro-Voice, Inc.*, 311 F.2d 508, 513 (7th Cir. 1962). We see no reason to consider the challenge now made as to inclusion of "illegal interest" in allocations to claimant. The time for this challenge was upon the allowance of orders in the summary judgment proceedings. All other Hammond contentions, such as those with respect to the Luscher and "dead" and "nonexistent" lien claimants, the effect of state foreclosure decrees on the liens and the "misappropriation" of trust assets are no longer viable.

We have in resolving Woodmar's contentions with respect to the fee and expense allowances of the Trustee and his attorney answered all arguments against the allowances presented by Hammond.

The Supplemental Final Report recommended: payment of 272 lien claims set forth on Exhibit A to the final report, claims in which the bonds and coupons were filed with the claim; the payment "only upon presentation of the bonds and coupons" of 43 lien claims set forth on Exhibit B to the final report, claims filed by "alleged" owners who had not filed bonds or coupons; and the allocation of $43,677.97 to unpaid lien indebtedness of the estate for which no claims had been filed, shown on Exhibit C.

The district court judgment ordered "payment . . . now" on claims listed in Exhibits A and B, subject to proper deductions for administrative expenses, upon presentation of bonds or coupons or "other satisfactory proof of ownership." The Trustee was ordered to pay the amounts allocate to claims listed in B into the clerk's office for disposition in accordance with section 66 of the Bankruptcy Act, 11 U.S.C. § 106 (1964), and 28 U.S.C. §§ 2041-42 (1964), and these amounts are to remain there until ownership is established in the manner provided. Payment "now" was ordered on claims listed on Exhibit C with

the same provision in respect to payment to and disposition by the clerk as given for those on Exhibit B.

We are not persuaded by Hammond that the order with respect to Exhibit C claimants is in error because section 66 of the Act does not apply since it presupposes claims that are provable and not "unproved liens." Hammond offers no legal or equitable alternative to the statutory scheme applied by the court.

The Trustee's motion to dismiss Woodmar's appeal, taken with the case, is denied. The judgment is affirmed.

A true Copy:
Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
Northern District Of Indiana
Hammond Division
* * (Caption — No. 3151) * *

(Filed February 10, 1966)

ORDER.

Hearings having been had in this matter on October 22, 1965, on the Trustee's Supplemental Final Report, and on all objections filed thereto, and on the petitions for the determination of and the allowance of fees and expenses filed by the trustee, Walter A. McLean, and by Herschel B. Davis, as attorney for the trustee, and on all objections filed to such petitions, and the court having filed its written opinion on January 19, 1966, as to the matters before the court at such hearing, now, therefore, for the reasons set forth in the court's Opinion and in accordance therewith,

It Is Ordered:

1.

That the objections filed by the City of Hammond, Indiana, claimants in Claims Nos. 261, 507, 450 and 235 to the Trustee's Supplemental Final Report, are now denied.

2.

That the objections to the Trustee's Supplemental Final Report filed by Betty Bassett and Grace Ellerman, claimants in Claim No. 531, are now denied.

3.

The Trustee's motion to strike out the objections filed by Woodmar Realty Company to the Trustee's Supplemental Final Report, is now denied.

4.

That the objections filed by Woodmar Realty Company to the Trustee's Supplemental Final Report are now denied.

5.

The Motion filed by the bankrupt, Woodmar Realty Company, on May 19, 1958, to strike out and/or to dismiss Trustee's Amended Final Report, is now stricken from the files.

6.

The claim filed with the trustee by the auditing firm of MacDiarmid, McCall & Co., for the balance of its auditing fees in the sum of $1,671.00, is now by the court approved and ordered paid.

The payment by the trustee to John Kettas, CPA, in the sum of $200.00 for auditing fees, is now approved.

7.

The objections filed by the City of Hammond, Indiana, to the petition of Walter A. McLean, as Trustee, for the determination and allowance of fees and expenses are now denied.

8.

The objections filed by the City of Hammond, Indiana to the petition of Herschel B. Davis, Attorney for the trustee, for the determination and allowance of fees and expenses are now denied.

9.

The objections filed by Woodmar Realty Company to the petition of Walter A. McLean, as Trustee, for the determination and allowance of fees and expenses, are now denied.

10.

The objections filed by Woodmar Realty Company to the petition of Herschel B. Davis, as Trustee's attor-

ney, for the determination and allowance of fees and expenses are now denied.

11.

The following claims listed in Exhibit A attached to the Trustee's Supplemental Final Report and described in detail in such Report, filed on unpaid special assessment bonds and coupons constituting secured claims in this proceedings which claims are each supported by an affidavit alleging that the bonds and securities described in such claims were owned by the claimant but that such bonds and coupons had become lost or mislaid, are now allowed by the court in the following amounts:

Claim 284	Deere & Co.	$ 29.76
Claim 139	Ellen Hutt Scheedle, Beatrice H. Bleiweiss and Margaret Hutt	387.90
Claim 63	Lee Martin, Ruth Martin Moore and Esther Martin, as Guardian of Ross Martin, Jr.	822.33
Claim 171	Mrs. L. M. Casper	470.75

12.

The following new claims, listed in Exhibit A attached to the Trustee's Supplemental Final Report and described in detail in such Report, filed on special assessment bonds and coupons constituting lien obligations of the bankrupt, Woodmar Realty Company, are now allowed by the court as follows:

Claim 544	Emma Wassman	$207.65
Claim 545	Mary A. Magginis and Veda Woodward	300.67
Claim 546	Helen G. Shanklin, Executrix of the Estate of Robert C. Shanklin	253.48
Claim 547	Edward L. Baker	512.91
Claim 548	Henry J. Schuh	336.51
Claim 549	Frieda Harbeck	814.33

13.

The special assessment bonds and coupons listed and described in Exhibits A, B and C, attached to and made a part of the Trustee's Supplemental Final Report, are now adjudged to be unpaid lien obligations in this bankruptcy proceeding and such bonds and coupons are entitled to payment in the amount of the cash allocation recommended in such Exhibits less a proportionate deduction for the payment of the costs of administration herein.

14.

Payment shall be made on all of the special assessment lien indebtedness in this matter as follows:

a) Payment is now ordered to the claimants listed in Exhibit A in the amounts for which such claims have been allowed, all as listed and described in Exhibit A, subject however, to a proportionate deduction for the payment of the costs of administration in this proceeding.

No payment shall be made, however, on any claim unless the bonds and coupons which are the basis of the claim are produced and filed with the court or unless other satisfactory proof of ownership is furnished in accordance with the provisions of the Bankruptcy Act.

b) Payment is now ordered and directed on all of the bonds and coupons listed and described in Exhibit B in the amount of cash allocated to each bond and coupon in Exhibit B, subject, however, to a proportionate deduction for the payment of all costs of administration.

It is further provided that no payment shall be made to any claimant or on any bond or coupon unless the bonds and coupons which are the basis of the claim are produced and filed with the court or unless other satisfactory proof of ownership is furnished in accordance with the provisions of the Bankruptcy Act.

Until ownership of such bonds and coupons listed in Exhibit B is established and until such bonds are produced, or until satisfactory proof is furnished as to the ownership of such bonds and coupons, in accordance with the provisions of the Bankruptcy Act, the Trustee shall pay the amounts allocated to such special assessment bonds and coupons, less a proportionate deduction for administrative expenses, into the Clerk's office of this court for disposition in accordance with the provisions of Section 66 of the Bankruptcy Act and in compliance with Sections 2041 and 2042, Title 28, U. S. Code.

c) Payment is now ordered and directed on all of the bonds and coupons listed and described in Exhibit C in the amount of cash allocated to each bond and coupon in Exhibit C, subject, however, to a proportionate deduction for the payment of all costs of administration in this proceeding.

It is further provided, however, that no payment shall be made to any claimant or on any bond or coupon for the amount allocated to bonds and coupons in Exhibit C unless the bonds and coupons which are the basis of the claim are produced and filed with the court, or unless other satisfactory proof as to ownership is furnished in accordance with the provisions of the Bankruptcy Act.

Until the ownership of the bonds and coupons listed in Exhibit C is established and until such bonds are produced, or until other satisfactory proof is furnished as to the ownership of such bonds, in accordance with the provisions of the Bankruptcy Act, the amounts allocated to payment for such bonds and coupons, less a proportionate deduction for administration costs, shall be paid by the trustee into the Clerk's Office of the court for disposition in accordance with Section 66 of the Bankruptcy Act, and likewise in accordance with Sections 2041 and 2042, Title 28, U. S. Code.

15.

The claim of Walter A. McLean for an allowance for his services as trustee is now allowed in the sum of $5,205.75.

The claim of Walter A. McLean for expenses incurred by him as trustee is likewise allowed in the sum of $729.96.

Such sums are ordered paid as a cost of administration in this proceeding.

16.

The claim of Herschel B. Davis for an allowance for services as attorney for the trustee is now allowed in the sum of $120,000.00.

The claim of Herschel B. Davis for expenses incurred by him as attorney for the trustee is now allowed in the sum of $1,800.96, and the further claim of Herschel B. Davis to be reimbursed for the sum of $1,500.00 expended by him in defending himself against charges brought by the bankrupt is now likewise allowed in the sum of $1,500.00.

Such sums are ordered paid as a cost of administration in this proceeding.

17.

The Trustee's Supplemental Final Report is now in all things approved.

18.

The Trustee's Financial Report filed on October 22, 1965, is now approved.

Enter:

This 10th day of February, 1966.

/s/ Robert E. Tehan
Judge, U. S. District Court

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
Northern District Of Indiana
Hammond Division
(Caption — No. 3151)

(Filed January 19, 1966)

OPINION.

After twenty-five years of bitter controversy, these bankruptcy proceedings which commenced under Chapter X of the Bankruptcy Act have reached the stage where every lien claim against the bankruptcy estate and every objection to claims has been ruled upon. The great majority of lien claims recommended for allowance by the trustee have been allowed by separate order, each order setting forth the amount in which the claim is allowed. The orders allowing claims were entered in 1963 and 1964, and no appeals therefrom were taken either by the respective claimants, who might have expressed by appeal dissatisfaction with the amounts in which the claims were allowed, or by the bankrupt, which could have expressed by appeal dissatisfaction with the allowance of claims and the rulings on its objections.

In July of 1965, the trustee filed his supplemental final report herein, requesting authority to make certain distribution of funds and requesting a determination of costs of administration. Objections thereto were filed by the bankrupt and by the claimants in Claim No. 531.[1] The report and the objections, which the trustee moved to strike, came before the court at the final meeting of

[1] A letter objection from claimant George R. Williams was denied orally on October 22, 1965.

creditors held pursuant to notice on October 22, 1965. At that hearing, objections filed by the City of Hammond as claimant in Claim Nos. 261, 507, 450 and 239[2], after denial of its motion for a continuance, were also called for hearing.

Although the trustee's motions to strike objections are clearly meritorious, we prefer not to act on those motions, choosing rather to consider all objections on their merits in order that a complete record may be had.

Objections Of The City Of Hammond And The Claimants In Claim No. 531.

These objections, which are startlingly similar, were called for hearing pursuant to notice on October 22, 1965. No one appeared on behalf of the claimants in Claim No. 531, and counsel for the City of Hammond, when called upon to present his position, merely expressed satisfaction with the argument previously presented by counsel for the bankrupt and requested an opportunity to investigate and substantiate its position with respect to Paragraph 6 of its objection. In order that their respective positions might be before the court, counsel for those objectors were granted leave to file memoranda within ten days in support thereof. No memoranda have been filed as of this date. We might assume therefore that the claimants in Claim No. 531 have abandoned their objections and that the City of Hammond has recognized the invalidity of and abandoned its objection in Paragraph 6. Nevertheless, a discussion of the objections follows.

In Paragraph 1 of the objections, the objecting claimants state that no notice was given them and no copies of papers filed on July 6, 1965 were served on them or their counsel. Court records reveal that notice of the final meeting of creditors was mailed timely to counsel of record for the objecting claimants. Service of the

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[2] The City actually meant Claim No. 235, not 239.

supplemental final report, etc. on the claimants is not required since, under General Order 12, they must be furnished only with a summary thereof. The notice mailed to their attorneys pursuant to this court's order contained a proper summary.

Paragraph 2 of the objections states that the claimants are unable to admit or deny the allegations in the report and demand strict proof thereof. If the objecting claimants are unable to admit or deny the allegations of the trustee, their inability results primarily from a reluctance to engage in the work of checking the records in this case, since the allegations contained in the report are drawn from the record. Neither the court, the trustee and his counsel or other parties in interest can on the strength of this paragraph b put to the time, expense and inconvenience of a lengthy hearing by an unwarranted demand for strict proof of facts which the objecting claimants have not even put in issue.[3]

Paragraph 3 of the objections states that the trustee proposes an illegal method of distribution in violation of the objecting claimants' rights to prove their claims and trace their liens. All of the claims held by the objecting claimants have been allowed in specific amounts, with the exception of Claim No. 235 which was disallowed on December 31, 1963. Orders allowing Claims Nos. 261, 450 and 507 were entered on October 10, 1963. An order allowing Claim No. 531 was entered on May 15, 1964. If the objecting claimants had any quarrel with the amounts allocated to their claims, they should have appealed from those orders and cannot be heard now, long after the time for appeal has expired, to complain that their rights to prove claims and trace liens are violated. Paragraph 3 can only be considered an attempt by the claimants to

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[3] If the objectors, after investigation, doubted an allegation, they should have denied it.

obtain a greater allowance on their claims.[4] However the amounts to which they are entitled have been finally determined.

Paragraph 4 of the objections protests diminution (of what, is not stated but we assume claimants mean diminution of the amount allocated to their claims) through payment of administrative expenses and allocation of funds to bonds and coupons which constituted a lien on real estate of the bankrupt sold herein but the ownership of which has not been established.[5] Insofar as the claimants protest such allocation, they are again attempting to recover larger amounts on their own claims, the amounts of which have been finally determined. They have alleged nothing to indicate why they, unlike all other claimants herein, should escape all expenses of this long administration.

In Paragraph 5, the objecting claimants state that lien claimants are required to appear in open court and prove their ownership[6] and rights to assets. We do not know why these claimants demand to prove what has already been established by order of this court thus needlessly and senselessly seeking to prolong this twenty-five year old litigation. The lack of necessity for a hearing has been adequately discussed in this court's opinion of September 23, 1963. (See in particular Page 10 of that opinion)

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[4] We are certain that the claimants are not seeking an opportunity to prove claims and trace liens in amounts less than those already awarded them by the court.

[5] Exhibits B and C to the supplemental final report propose such an allocation. The objecting claimants do not deny that the bonds and coupons referred to therein affected the bankrupt's realty or are unpaid.

[6] The objecting claimants have demonstrated possession of the bonds and coupons on which allowances were made which, as we stated in Claim No. 441, proves ownership.

The City of Hammond, in Paragraph 6 of its objections, which paragraph is not contained in the objections of the other claimants, expresses fear that the trustee's allocation will subject it to suits and create problems. At the hearing of October 22, 1965, the City was unable to explain how the payment by the trustee out of funds never held by the City would in any way subject it to litigation, and as stated previously failed to file a memorandum in support of its position though afforded an opportunity to do so. Absent any argument, specification or even indication of disadvantage, we fail to see how disbursement of funds out of this court with a proper record kept can prejudice the City in any fashion.

The objections of the City of Hammond and of the claimants in Claim No. 531 to the trustee's supplemental final report are without merit. Insofar as they purport to be objections to the original final report they are likewise without merit.

Objections Of The Bankrupt.

As stated previously, we will consider the bankrupt's objections to the trustee's supplemental final report, some eleven pages in length, on their merits, without regard to the problem of whether the bankrupt, either as the bankrupt or as the recent purchaser of several small lien claims, has standing to object. In stating that we will consider the objections on their merits, however, we merely mean that we will not refuse to consider them, nor will we strike them, because of the lack of standing on the part of the bankrupt to object.

The objections, which the bankrupt filed on October 8, 1965, are, with the exceptions of Paragraphs 7, 8 and 9 thereof, an almost exact copy of portions of its amended objections dated April 29, 1958, to the trustee's final report. In merely reiterating its objections and in the content of the additional Paragraphs 7, 8 and 9, the bankrupt completely ignores the fact that since 1958 a test claim, Claim No. 441, was decided, that every lien claim

was examined in the light of the test case, that separate orders allowing most of those claims have been entered, that the amount which each claimant is entitled to receive has been established by orders entered herein in 1963 and 1964, that all of the bankrupt's objections to claims have been fully considered and held to be without merit, including objections as to amount and objections raising bar dates, statutes of limitations, etc., that it has been ruled that the trustee was under no duty to raise specious objections to claims, and that the lien liability against the bankrupt estate has been finally established.[7] The bankrupt has also either intentionally distorted or simply failed to understand the manner in which the lien claimants will be paid.[8] It further indefatigably argues that

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[7] The bankrupt has stated in Paragraph 9 of its objections that orders allowing claims were "*only pro rata* and not final." The orders established definitely the amount recoverable in each claim and were final orders from which the bankrupt or claimants could have appealed and from which no appeals were taken. Provisions in the orders reserving to claimants a right to claim additional funds should additional funds become available did not affect the finality of the orders. Even if they had, the finality was unquestionably established when the source of additional funds was closed, that is, when settlement agreements were set aside by order of this court dated April 28, 1964.

[8] The bankrupt persistently insinuates that claimants will be paid without producing bonds or coupons or satisfactorily establishing ownership thereof. The trustee and the court have never so indicated. Any order directing payment will, of course, provide that the claimant must produce his bonds and coupons before payment be made and that copies thereof must be furnished for the claim file should originals be removed under order of court, unless the court directs otherwise. In producing the bonds and coupons, each claimant will establish possession and, as we stated previously, possession of these bearer bonds has been held to prove ownership. If the possessor is not the owner, it is the true owner, not the bankrupt who can complain.

claimants must prove their claims, implying that this presupposes a full scale court hearing on each claim, forgetting that the filing of a proper proof of claim itself constitutes proof, absent valid objection, and that the bankrupt has had the opportunity and failed to raise valid objections. We suggest that counsel for the bankrupt read our opinions and that of the Court of Appeals regarding Claim No. 441, and our opinions of May 20, 1963, September 23, 1963 and April 28, 1964, dealing with the remaining lien claims, which opinions are incorporated herein by reference. Those opinions and the entire record herein establish conclusively the lack of merit of the bankrupt's objections. The raising of such objections at this stage of the proceedings can only be considered as harassment of the trustee and parties in interest and as an insult and affront to the court. To dignify the objections by a lengthy discussion of what has been exhaustively treated previously would be unseemly.

In May of 1958, long before the supplemental final report was filed, the bankrupt moved to strike and/or dismiss the trustee's amended final report. Counsel for the trustee has moved to strike out that motion on the ground that the bankrupt is not a party in interest. Since we are here treating the bankrupt's arguments and pleadings as if it were a party in interest, we will not strike its motion on that ground. It must, however, be stricken because it has not been directed to the supplemental final report and because it sets forth matters which are wholly antiquated or without merit in the light of the decisions of this court and the Court of Appeals since 1958.

Trustee's Final Report.

The supplemental final report which came on for hearing pursuant to notice on October 22, 1965 brings up to date the final report filed originally in 1955 and the amended final report filed in 1958. It reflects the fact that since those reports were filed the claims recommended for allowance by the trustee have been allowed, the bank-

rupt's objections thereto have been considered and held to be without merit, and the bankrupt has been held to be not a party in interest. It further recites certain changes in ownership of bonds and coupons constituting a lien against assets of the bankrupt, and changes in allocations.

Because no meritorious or valid objection has been raised to the supplemental final report, as our prior discussion herein reveals, the court could properly state without discussion that it has reviewed that report and the record herein and determined that the report must be approved. However, due to the complicated nature of these proceedings, the length of time they have been pending and the possibility of distortion of fact due to the very immensity of the record, some limited discussion would appear to be in order.[9]

The trustee recites and the record reveals that when these proceedings commenced the bankrupt was the owner of considerable real estate which was encumbered by special assessment liens arising under Indiana's Barrett law. The real estate was sold or transferred in these proceedings free and clear of such liens which were transferred to the proceeds of the sales.[10] The duty then devolved upon the trustee to investigate to determine what liens existed and to determine what funds were available to satisfy them.

Claims were filed by the holders of most, but not all, of the Barrett law bearer bonds and coupons which affected property of the bankrupt. In its opinions respecting those claims, particularly its opinion of September 23, 1963, this court laboriously considered each assessment

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[9] We see no need to discuss the minute details of the report, such as treatment of newly filed claims or claims on which bonds and coupons have recently been produced, since no proper challenge thereto has been made.

[10] Some complication here arises because some of the property was transferred to satisfy another indebtedness.

roll under which claims were made and the bankrupt's contentions with respect thereto and determined that certain rolls constituted valid liens against property of the bankrupt.

In the supplemental final report, the trustee has recommended that the bonds and coupons listed in Exhibits A, B and C,[11] forming a part of his report, be adjudged unpaid lien liabilities of the bankruptcy estate, entitled to priority. Such an adjudication has in effect already been made as to Exhibits A and B, and since no claim of payment has been raised as to bonds and coupons listed in Exhibit C and since the rolls involved in Exhibit C have all been held to have affected the property of the bankrupt when these proceedings commenced, the bonds and coupons listed therein can be and now are held to be unpaid lien liabilities of the bankruptcy estate.

Payment can be and now is ordered to claimants listed in Exhibit A, who have satisfactorily established their

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[11] Exhibit A lists all claims on which bonds and coupons or other satisfactory proof of ownership have been produced. These claims have all been allowed in specific amounts. Exhibit B lists all claims on bonds and coupons on which payments are due but which have not been produced. These claims have all been allowed in specific amounts, but payment thereof will be withheld until the bonds and coupons are produced or the court is otherwise furnished with satisfactory proof of ownership. Exhibit C lists outstanding bonds and coupons in rolls which we have held to constitute liens against the bankruptcy estate, upon which bonds and coupons no claim has been filed. This record lien liability must, of course, be recognized by the trustee although no claims are filed, since lien claimants are under no obligation to file claims and the trustee must honor all valid claims. (While the bankrupt has asserted that these rolls are no longer liens, an assertion which the court has held to be erroneous, it has never claimed that Woodmar has satisfied its lien liability.)

ownership of the bonds and coupons on which their claims have been allowed, in the amount in which such claims have been allowed, subject to a proportionate charge for costs of administration. A like order can be entered as to claims in Exhibit B when bonds and coupons are produced or other satisfactory proof of ownership furnished. When proper proof of ownership is filed as to bonds and coupons listed in Exhibit C, payment will be ordered in the amounts allocated to those bonds and coupons in the trustee's report, subject to a proportionate charge for costs of administration.[12] Until ownership of bonds and coupons listed in Exhibits B and C is established, the trustee will pay the amounts allocated thereto as provided in §66 of the Bankruptcy Act and in accordance with §2041 and §2042, Title 28, U.S.C. subject to a proportionate deduction for costs of administration.

The accounting fees set forth in the supplemental final report at Page 38 are hereby approved and ordered to be paid.

The amount due the Referees' Salary and Expense Fund must be computed on the amount available for distribution to creditors. This will not be fixed with certainty until the time for appeal of our orders regarding costs of administration has expired or appellate procedures have been exhausted. We will compute the amount due the Referees' Salary and Expense Fund at that time.

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[12] In our opinions with respect to Claim No. 441 and in our opinion of September 23, 1963, we discussed at length the amounts in which claims were allowed. We need not therefore repeat here a discussion of amounts allocated to claims to dispose of the bankrupt's contentions regarding amounts. While ownership of bonds and coupons involved in Exhibits B and C is not established, it has been established that those bonds and coupons are unpaid lien liabilities of the estate. The bankrupt, even if it were a party in interest, would have no standing to question ownership.

Petitions Of Trustee And Trustee's Attorney For Fees And Expenses.

On February 16, 1953, an order was entered in these proceedings, which had commenced in 1941 under Chapter X of the Bankruptcy Act, adjudging the debtor, Woodmar, bankrupt and directing that bankruptcy be proceeded with. Walter A. McLean, who had been appointed trustee in the Chapter X proceedings in December of 1952, and Herschel B. Davis, who had been appointed attorney for the trustee in May of 1950, thereafter became trustee and trustee's attorney respectively in the straight bankruptcy and have acted in those capacities to the present time. Their petitions for fees and expenses cover the straight bankruptcy period of these proceedings.

As their petitions and the record herein reveal, neither the trustee nor his attorney has been provided with a sinecure. The questions with which they had to cope concerning lien rights against the estate and apportionment of funds were highly complex. And the complexities confronting them were intensified by the activities of the bankrupt which (1) insisted on repeatedly raising specious objections to claims, (2) irresponsibly charged the trustee and his attorney with fraud, (3) resisted any attempt to honor valid lien claims even after it should have recognized that its objections to such claims lacked any merit, and, (4) in its campaign of obstructionism filed eight appeals and nine petitions for mandamus with the Court of Appeals and three petitions for rehearing and two petitions for certiorari following decisions of that court.[13]

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[13] A party normally is not criticized for vigorous prosecution of his case. In this case, however, counsel for the bankrupt has refused to acknowledge the existence of hundreds of rulings against his position. He has also blithely ignored the adverse decisions of the Court of Appeals.

In the performance of their duties, the trustee and his attorney investigated lien claims against this estate and determined that most of those claims were valid and should be allowed and the extent of the lien rights against the estate, determinations which this court has held to be correct. These determinations were made by 1955. Since that time the bankrupt, and the bankrupt alone, has impeded the closing of this estate and the only persons with sufficient interest to withstand its attack were the trustees and his attorney.[14]

At the hearing of October 22, 1965, the City of Hammond filed objections to the fee petitions of the trustee and his attorney. Its counsel stated that he was unprepared to proceed and the court granted him ten days within which to present his specifications of objection and argument in writing. Nothing has been filed as of this date. Absent any showing to the contrary, we hold those objections to be without merit. As was the case with its objections to the final report the City, in merely denying possession of information with which to plead, cannot require "strict proof."

The bankrupt, of course, has also objected to the petitions of the trustee and his attorney for fees and expenses,[15] but has challenged no specific item in the verified itemizations of time spent and expenses incurred attached to such petitions.

With respect to both petitions the bankrupt charges, as he has continuously charged, that the trustee and his counsel, in recommending payment of lien claims and

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[14] Their interest, of course, arose out of their duty as arms of the court. The bankrupt's interest was in regaining approximately a half million dollars. No lien claimant had sufficient interest, financially or otherwise, to wage war on that large a scale.

[15] The trustee's motion to strike those objections will be denied.

resisting the bankrupt's attempts to secure the disallowance thereof, have violated their duty to defend the estate. It is and has been the bankrupt's position that the trustee's duty to preserve the estate requires him to resist even those claims against the estate which he believes to be valid and is, in effect, a duty to represent, or attempt to preserve the assets for, the bankrupt. This position is absurd. The trustee has a duty to preserve the assets for those entitled to them, and to defend the estate against invalid claims, and his failure to raise non-meritorious objections to valid claims in no way violates that duty. In fact, had the trustee raised himself the objections to claims raised by the bankrupt, he would rightfully have been subject to criticism for wasting assets of the estate in worthless litigation.

The trustee and his attorney are also charged by the bankrupt in its objections with failure to perform services benefitting the estate and with delaying its closing. As stated previously, it is the bankrupt which impeded the closing of this estate and the actions of the trustee and his attorney in resisting the bankrupt's efforts to prevent payment of valid claims were indeed beneficial.

The bankrupt further asserts that the trustee's attorney should be denied fees because he took legal positions contrary to those taken by the bankrupt regarding validity of claims, settlements, etc. The bankrupt ignores completely the fact that in all major respects the positions taken by the trustee's attorney since his appointment in 1953 have been approved by this court.

Because of the complicated nature of these proceedings and of the Barrett law claims involved herein, the time and work necessarily involved in determining the extent of lien rights against the estate, and the difficulties caused the trustee by reason of the actions of the bankrupt which necessitated not only substantial litigation to assure that persons entitled to funds out of the estate receive those funds but also defense against personal attacks upon

himself, the trustee is entitled to receive the maximum fees permitted under the statutes, plus his expenses as shown in his petition. Since these proceedings commenced prior to 1956, the statutory maximum is $5205.75. His petition for compensation in excess of that maximum must be denied, there being no authority for granting such additional compensation.

In his petition, the trustee's attorney seeks an admittedly substantial allowance for fees. We know of no case, however, in which a substantial allowance is so well justified. The legal questions confronting him under the Barrett law concerning allocations of funds to lien claimants herein were fraught with difficulties at best.[16] Add to these the problems caused by the bankrupt, including eight appeals, three petitions for rehearing, two petitions for certiorari to the Supreme Court, charges of fraud, resistance of valid claims, etc., and it is apparent that the trustee's attorney was faced with and acquitted himself of a task of horrendous proportions. It is typical that the bankrupt, whose activities precipitated much if not most of the labor of the trustee's attorney, now objects that his petition is excessive and that his efforts were not beneficial. However, this court, with its knowledge of these proceedings, can unequivocally state that it was primarily through the work of the trustee's attorney, performed under unbelievably arduous and unpleasant conditions, that entitlement to assets in this estate was determined. Absent his efforts it is not inconceivable that the bankrupt would have succeeded in harassing and wearying lien claimants to the extent that it would acquire by default assets to which it had no right.

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[16] Counsel for the bankrupt himself, as our opinions with respect to Claim No. 441 and our opinion of September 23, 1963 reveal, was unable to understand or compute the extent of lien rights of claimants under the Barrett law.

Considering the time already spent and to be spent by the trustee's attorney as set forth in his petition, the nature and difficulty of the services performed and the obstructionism encountered, the result of his efforts, and the minimum fee schedules, it is our opinion that the $120,000 sought constitutes reasonable compensation for work done and to be done in this matter. We further hold that the trustee's attorney is entitled to the reimbursement sought for expenses, excepting $6000.00 for stenographic hire, and is entitled to reimbursement of amounts paid out for legal services in defending himself against the bankrupt's charges of fraud.

With respect to the bankrupt's objections to the fee petitions, like its objections to the supplemental final report, we note that the bankrupt considered itself entitled to a full scale evidentiary hearing. The fee petitions were in the proper form required by §62 of the Bankruptcy Act, and specified in detail the services performed and expenses incurred. General objections relating to the benefit to the estate and extent of performance of duties do not raise evidentiary issues. Those paragraphs of the objections stating the bankrupt's version of the history of these proceedings are not relevant to the matters before the court and are merely an attempt to obscure the real questions now before the court while ignoring the present status of these proceedings.

Counsel for the trustee will prepare orders pursuant to this opinion for submission to the court.

Dated, this 19th day of January, 1966.

/s/ Robert E. Tehan
U. S. District Judge